



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 23, 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Environmental Justice News from June 23 through August 15, 2004

FROM: Nicholas Targ, Counsel
Office of Environmental Justice, OECA, USEPA

Mustafa Ali, Environmental Protection Specialist
Office of Environmental Justice, OECA, USEPA

TO: Barry E. Hill, Director
Office of Environmental Justice, OECA, USEPA

This summarizes select environmental justice news from June 23 through August 15, 2004. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: “(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low***income) or (executive order 12898) or (civil right! w/50 environmental)”. Please note that we have not included multiple articles covering the same topic.

For the period ending August 15, 2004, the following news is current:

A. News

1. Patrick Harvie, “Giving the locals a fighting chance; Voices of Scotland,” Morning Star, Scotland (August 12, 2004).

The article urges reform of a law that provides developers, whose applications for permits have been denied, with a right of appeal, but does not offer a comparable right of appeal to potentially impacted individuals if the application is granted. The article notes that, “Two years ago, First Minister Jack McConnell visited [an area with the largest landfill in Europe, and] proudly announc[ed] that environmental justice was at the top of his agenda... Yet, this year, the Scottish Executive gave the go-ahead for another landfill site in the area... Local residents are active in a very vocal, well-organised action group and have gained considerable media attention, but, without a third-party right of appeal, this community and many others may inevitably come up against the same brick wall.”

2. John Beaman, Letter to the Editor “Landfill, Sewage Plant Were Already There,” News & Record, Greensboro, NC (August 10, 2004).

The letter to the editor objects to allegations that "...the black community has always gotten stuck with the things the white community didn't want to live with, such as the landfill, sewage-treatment plants and the Lorillard tobacco plant." The letter states that the facilities were there before the proximate population was majority African American, and "To imply that people moving into a neighborhood are somehow racially discriminated against, long after some nearby undesirable facility was established, is simply blatant manipulation of an issue for media attention."

3. Chris Ahmuty, "Great Lakes Water; The Great Divide; Diversions Could Hurt Poor," Milwaukee Journal Sentinel, Milwaukee, WI (August 8, 2004).

The article indicates that a potential water compact, addressing diversions from the great lakes, will have environmental justice implications. Specifically, the author notes that diversions will likely induce sprawl in that, "The undisputed lack of affordable suburban housing, and the ongoing resistance to meaningful public transportation in and to the suburbs, means that many poor Milwaukee families -- disproportionately, persons of color -- are simply unable to live or work in prosperous suburban communities." The author also raises issues pertaining to Native Americans, and calls for increased public participation and "environmental justice principles... to be incorporated into the agreements themselves."

4. Editorial, "Waste Site Waiver, Approval Could Prove Costly," Philadelphia Inquirer, Philadelphia, PA (August 7, 2004).

The editorial urges the City of Philadelphia not to grant a waiver that would permit development of a recycling facility on the Schuylkill River, in an already environmentally burdened neighborhood, that could become part of Mayor Street's "River City" initiative. According to the article, the waiver would override an ordinance that prohibits trash-related facilities within 300 yards of a public park or playground. The editorial states that, "If the Street administration were to grant a waiver allowing the waste facility, federal and state environmental officials say the facility would still face a tough 10-step environmental-justice [sic] process designed to limit polluting operations in already impacted low-income and minority areas."

5. Katherine Stapp, "Environment: Cleaning Up Lead Contamination on Mexico-U.S. Border," Inter Press Service, New York (August 6, 2004).

The article describes a United States-Mexico program, "Border Environment 2012," which funded the remediation of an abandoned lead smelting facility. The facility is located adjacent to a low-income township on the Mexico-side of the border. Amelia Simpson, director of the private Border Environmental Justice Campaign, lauded the effort and the involvement of directly impacted residents, according to the article. The article also states that Carlos Rincon, director of the Mexican project of the group Environmental Defense, based in the U.S. border city of El Paso, Texas, similarly notes that "One of the advantages of Border 2012 over previous binational initiatives is the participation of indigenous groups..." According to the article, "To date, the U.S. Environmental Protection Agency (EPA) has contributed some \$475 million to over 50 water and wastewater projects along the U.S.-Mexico border, providing access to potable water and sanitary treatment systems for 6.5 million border area residents."

6. Sharon Haddock, "Road Job Puts Grove in Bind," Deseret Morning News, Salt Lake City, UT (August 5, 2004).

The article describes three planning alternatives to address a transportation bottleneck located between a low-income trailer park, historic dwellings, a head start school, and a rodeo park. Recognizing the complexity of the issue, the Utah Department of Transportation (UDOT) manager

in charge of the project is quoted as saying that, "it's imperative that residents who live in the mobile home park are treated with sensitivity in accordance with the new Environmental Justice standards. If they are asked to relocate, UDOT would need to include money in the improvement budget to pay for buying their homes."

7. C.M.B., "Newspoints," Black Enterprise (August 2004).

The article reports that, "Alphonse 'Buddy' Fletcher Jr., a [Black executive] Wall Street All-Star, is donating \$50 million to further the cause of African American students. The chairman of New York-based Fletcher Asset Management plans to award 50 fellowships in the amount of \$50,000 each to scholars, writers, and artists. Other portions of his donation will provide environmental justice scholarships to Yale University's School of Forestry & Environmental Studies, where Fletcher, 38, is a graduate student."

8. Isaac Groves, "EPA gives grant to Mebane, N.C., group to study pollution in low-income areas," Times-News, Burlington, North Carolina (July 9, 2004).

The Environmental Protection Agency awarded a \$100,000 environmental justice collaborative problem-solving cooperative agreement to the West End Revitalization Association (WERA) in Mebane, North Carolina. Under the agreement, WERA will develop a collaborative process with its partners to encourage measures for the installation of safe water and sewer services, the clean up of toxic substance sites, and the improvement of air quality in Mebane's minority and low-income communities that do not have access to basic amenities. WERA will collaborate with the communities of West End, White Level, Buckhorn Road/Perry Hill, as well as with local, state, and federal government officials to develop a plan to address local environmental issues. WERA President Omega Wilson is quoted as saying, "the grant would fund studies of ground and surface water pollution, air pollution, environmental effects around landfills and a mitigation plan for the proposed N.C. 119 bypass."

9. "Peggy Shepard, Winner of Heinz Award," Essence (August 2004).

The article reports that Peggy Shepard, co-founder and executive director of West Harlem Environmental Action (WE ACT), received the prestigious Heinz Award for her "brave voice" and "courageous advocacy" in addressing environmental justice.

10. "Good Morning, Governor," The Montgomery Advertiser, Birmingham, Alabama (July 3, 2004).

"U.S. Representative, Arthur Davis has formed a committee to examine environmental justice issues in his district, which includes much of the impoverished Black Belt," the article reports.

B. Legislative/Regulatory/Programmatic—

1. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 FR 35602, (June 25, 2004).

The policy establishes guidance on the implementation of Title VI with respect to individuals with Limited English Proficiency. Under the guidance, "[r]ecipients [of Federal assistance] are required to take reasonable steps to ensure meaningful access to their programs and

activities by LEP persons. While designed to be flexible and fact-dependent, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. The intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofits.” The comment period for this policy has closed.

2. California, SB 1703, “California Certified Green Business Program,” introduced by Senator Richard Alarcon (D-San Fernando Valley Senate District 20) on February 10, 2004, amended August 10, 2004.

According to the legislative counsel’s digest, “This bill would establish a voluntary California certified green business program to certify businesses that engage in environmentally beneficial operations. The bill would authorize a county or city, or its designated agent, to institute a California certified green business program by notifying the California State University, Hayward’s Environmental Finance Center, designating a green business coordinator, and implementing the program in accordance with specified guidelines.” Among its purposes, the bill is intended “to promote environmental justice, and to recognize those businesses that adopt environmentally sustainable business practices.”

3. California, Environmental Protection Agency, Draft “Environmental Justice Action Plan” (August 2004).

The draft Environmental Justice Action Plan, released on August 13, 2004, for 30 day public comment, “provides opportunities for Cal/EPA and its [Boards, Departments, and offices] to take the initial steps toward addressing complex EJ issues such as precautionary approaches and cumulative impacts. Cal/EPA will explore options for addressing EJ issues and examine various ideas, concepts, and approaches— in a structure and focused manner. Cal/EPA will expand the current knowledge base regarding critical EJ topics, and develop tools and guidance to address the Secretary’s EJ priorities. Additionally, Cal/EPA will develop implementation options, including proposals for policy, regulatory, and statutory changes, to advance the integration of EJ into its environmental programs.” The draft Environmental Justice Plan is available online at the following address <<http://www.calepa.ca.gov/EnvJustice/>>.

4. California, California Environmental Protection Agency, draft “Intra-Agency Environmental Justice Strategy,” (July 2004).

In addition to establishing four overarching goals (Public Participation and Community Capacity Building; Environmental Justice Integration; Research and Data Collection; and Cross-media Coordination and Accountability), the draft strategy establishes specific objectives to be achieved. The document’s release is pending final review. The draft is available at the following address <<http://www.calepa.ca.gov/EnvJustice/>>.

5. Texas Department of Transportation, Proposed Rule, 43 TAC §§ 2.40 - 2.50 29 TEXREG 7941, Subchapter C. Environmental Review and Public Involvement for Transportation Projects (August 13, 2004).

For transportation projects that require a public hearing, the rule would require, among other things, a certification of a public involvement process, which includes: “(i) general information on the public hearing; (ii) a statement regarding consideration of the economic, social and environmental impacts of the project; (iii) a statement regarding consideration of the statutory provisions of the Civil Rights act of 1964; and (iv) a statement regarding the project’s consistency with planning goals and objectives.”

4. Washington Energy Facility Site Evaluation Council, Proposed Amendments to Order 85-5, 4-14 WSR 55 (July 21, 2004).

Among other provisions, the proposed amendments would include a requirement that the applicant “describe how the proposal’s design and mitigation measures ensure that no group of people, including any racial, ethnic, or socioeconomic group, bear a disproportionate share of the environmental or socioeconomic impacts resulting from the construction and operation of the proposed facility.”

C. Litigation—

1. Ball v. Union Carbide Corp., Nos. 02-6389/6311 2004 U.S. App. Lexis 14572 (6th Cir., July 15, 2004).

A three judge panel of the Sixth Circuit Court of Appeals affirmed a trial court’s dismissal of plaintiffs’ tort and 5th Amendment Equal Protection claims. Specifically, the court ruled that the statute of limitations had run on the plaintiffs’ claims, the proposed class did not meet the requirements for certification, and that “lingering vestiges” of past discrimination were not the proximate cause of plaintiffs’ injuries. The plaintiffs’ raising the Equal Protection Clause claim were African Americans who live, or have lived, in the Town of Sarboro. As stated in the opinion, Scarboro was establish as a segregated “camp” for African Americans, who were recruited by the Federal government to work at the Oak Ridge nuclear weapons facility, and is proximate to an Oak Ridge uranium enrichment facility. Among other things, the plaintiffs maintained that “Defendants, by placing plaintiffs in the location... of the... plant, created a condition which was inherently unsafe and unhealthy; and is the proximate cause of plaintiffs’ injuries....” Rejecting this claim, the court quoted approvingly of the defendant’s argument that, “The fact that [Plaintiffs’] allege personal injuries [from hazardous substances and radiation].... might not have occurred... but for the racial discrimination that led to the establishment of [the settlement where the workers lived]... does not mean that the discrimination was the proximate cause of those injuries and damage. . . . Under plaintiffs’ logic, anything bad that happens as a result of Scarboro’s location can be deemed a ‘vestige’ of discrimination since Scarboro itself would not exist but for discrimination.”

2. In the Matter of the Application of the Sullivan County Division of Solid Waste, for the Phase I (Cell 6) expansion of the County landfill in the Village of Monticello, Sullivan County, Application No. 3-4846-00079/00021, 2004 N.Y. ENV LEXIS 50 (NYDEC July 20, 2004).

In the review of an application to expand an existing landfill in Sullivan County, New York, a State Administrative Law Judge (ALJ) denied several claims alleged in petitions made by landfill opponents. In oral testimony and written comments, residents complained of odors, health issues, failure of environmental control equipment, and other matters relating to the facility. The County Supervisors and members of the business community, however, supported the landfill’s expansion. The ALJ identified that significant, adjudicable issues remain with respect to odors and litter control, but that other matters, including compliance with the State’s environmental justice policy (Commissioner Policy No. 29 (CP-29)), had been adequately addressed.